THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6713 OF 2006

Dated: 28th April, 2006.

Between:

M/s. Yada Spices (Private) Limited,

Rep. by its Managing Director,

R. Srinivasa Rao, S/o. R.V. Ranga Rao,

Aged about 47 years, R/o. H.No.11-23-1488/2

L.B. Nagar, Warangal. … Petitioner

And

1. The Union Bank of India, rep. by its Authorised Officer,

Warangal Branch, H.No.8-11-2, P.O. Box No.22,

J.P.N. Road, Warangal District and another.

… Respondents

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondents in taking over the possession of Ac.3.24 guntas of land situated in Sy.No.520/A, Mogilcharla Village, Geesukonda Mandal of Warangal district owned by the petitioner as arbitrary, illegal and in violation of the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act').

It is not in dispute that the petitioner availed a term loan from the respondent – Union Bank of India in the year 1999 creating mortgage in respect of the above said land belonging to the petitioner. In this Writ Petition, though the petitioner admitted that the loan could not be repaid as per the repayment schedule and consequently the loan account was declared as non-performing account, pleaded that while his request for One Time Settlement (OTS) was under consideration, on 3-3-2006 without any prior notice, the officials of the respondent Bank broke open the locks of the factory and highhandedly took possession of the same. It is contended that the said action of the respondents without issuing any notice as contemplated under Section 13 (2) of the Act is arbitrary and illegal.

On behalf of the respondents, a detailed counter-affidavit has been filed denying the allegations made by the petitioner and stating that since the petitioner's account became a non-performing account, proceedings under Section 13 (2) of the Act were initiated and a notice dated 25-2-2004 was served on the petitioner. In spite of the same, the petitioner failed to pay the amounts due. Hence, the possession of the secured assets i.e, the land admeasuring Ac.2.02 cents in Sy.No.520/A/1 & 2 was taken over by the Mandal Revenue Officer, Geesukonda Mandal under a cover of panchanama on 3-3-2006. The possession was also handed over to the respondent Bank on 3-3-2006 as per the provisions of the Section 14 of the Act and a detailed inventory was also recorded. A notice as contemplated under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules') was delivered personally to the petitioner, who was present at the time of the taking over possession, and it was also published in the news papers on 6-3-2006. Thereafter,

the respondent issued a Sale Notice which was also received by the petitioner on 12-4-2006. A paper publication was issued on 7-4-2006 with regard to the public auction of the properties, scheduled to be held on 10-5-2006. The writ petition filed o n 3-4-2006 suppressing all the material facts is misconceived and cannot be entertained.

The material placed before this Court by the respondents shows that the petitioner earlier filed W.P.No.2107 of 2005 questioning the notice issued under Section 13 (2) of the Act dated 22-5-2004 contending that the objections raised by it were required to be considered by the Bank and without such consideration the Bank cannot proceed further in the matter. A Division Bench of this Court disposed of the said writ petition by order dated 9-3-2005 with a direction to the respondent Bank to take an appropriate decision by duly considering the objections made by the petitioner.

The material on record also shows that in terms of the said order, the objections raised by the petitioner were considered and the petitioner was offered settlement under OTS for Rs.46.96 lakhs as per the existing guidelines of the respondent Bank. Though the same was intimated to the petitioner, he did not come forward with payment.

Thus, it is clear that the petitioner was very well aware of the notice issued under Section 13 (2) of the Act. At any rate, as on today, the notice under Section 13 (4) of the Act was also issued and the possession was taken invoking Section 14 of the Act and the same was delivered to the respondent Bank. Hence, the writ petition is without any merit and the relief as prayed for cannot be granted. However, this shall not preclude the petitioner to work out the remedy of appeal as available under Section 17 of the Act following due process of law.

Accordingly, the Writ Petition is dismissed. No costs.

G. ROHINI, J.

Dt. 28-4-2006

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